MARIA C. ROBERTS, State Bar No. 137907
RONALD R. GIUSSO, State Bar No. 184483
VICTORIA G. PURUGANAN, State Bar No. 239257
SHEA STOKES ROBERTS & WAGNER, ALC
510 MARKET STREET, THIRD FLOOR
SAN DIEGO, CALIFORNIA 92101-7025
TELEPHONE: (619) 232-4261
FACSIMILE: (619) 232-4840

Attorneys for *Specially Appearing* Defendant HARRAH'S ENTERTAINMENT, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER, Plaintiff, vs. HARRAH'S ENTERTAINMENT, INC. and DOES 1 through 100, inclusive, Defendants.	CASE NO. 07 CV 2226 DMS (POR) Judge: Hon. Dana M. Sabraw Mag. Judge: Hon. Louisa S. Porter DECLARATION OF RONALD R. GIUSSO IN SUPPORT OF *SPECIALLY APPEARING* DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO FILE A FIRST AMENDED COMPLAINT Date: January 7, 2008 Time: 10:30 a.m. Courtroom: 10

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I, Ronald R. Giusso, declare:

1. I am an attorney at law licensed to practice before all courts of the State of California, and I am employed by the law firm of Shea Stokes Roberts & Wagner, ALC, counsel of record for *Specially Appearing* Defendant HARRAH'S ENTERTAINMENT, INC.

2. I have personal knowledge of each of the facts set forth in this declaration and could and would competently testify thereto.

3. On December 28, 2007, my office was electronically served with plaintiff's motion to amend to file a first amended complaint. A proposed amended complaint was not included with plaintiff's motion.

4. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiff's Complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of January 2008 at San Diego, California.

s/Ronald R. Giusso
Ronald R. Giusso

EXHIBIT 1

Chad Austin, Esq. SBN 235457
3129 India Street
San Diego, CA 92103-6014
Telephone: (619) 297-8888
Facsimile: (619) 295-1401

Attorney for Plaintiff JAMES M. KINDER, an individual

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER, Plaintiff, v. HARRAH'S ENTERTAINMENT, Inc. and DOES 1 through 100, inclusive, Defendants.	CASE NO. 37-2007-00076114-CU-MC-CTL **COMPLAINT FOR DAMAGES, INCLUDING PUNITIVE DAMAGES, INTEREST AND ATTORNEY'S FEES, AND FOR INJUNCTIVE RELIEF** **Violations of Telephone Consumer Protection Act of 1991** **Violations of California Civil Code § 1770 (a) (22) (A)** **Trespass to Chattel** **Unfair Business Practices**

COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San Diego, State of California.

2. Defendant HARRAH'S ENTERTAINMENT, Inc. (hereinafter referred to as "Defendant") was at all times herein mentioned a Delaware corporation, doing business in the County of San Diego, State of California.

3. Plaintiff is unaware of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

4. At all times herein mentioned each defendant was the partner, agent and employee of each co-defendant herein and was at all times acting within the scope of such partnership, agency and employment and each defendant ratified the conduct of each co-defendant herein.

FIRST CAUSE OF ACTION
[Violation of Telephone Consumer Protection Act of 1991]

5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by reference.

6. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – "TCPA").

7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States Code makes it unlawful for any person to "Make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a paging service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."

8. Defendants have been calling Plaintiff's number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's express permission. These calls were not made for any emergency purpose, nor were these calls exempt under subdivision (c) of section 64.1200 of title 47 of the Code of Federal Regulations.

9. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii). Plaintiff may obtain relief in the form of injunctive relief, or Plaintiff may recover $500.00 for each violation, or both. If the court finds that defendants' violations were willful or knowing, it may,

in its discretion, award up to three times that amount.

SECOND CAUSE OF ACTION
[Violation(s) of California Civil Code § 1770 (a) (22) (A)]

10. Plaintiff realleges paragraphs 1 through 9 above and incorporates them herein by reference.

11. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages disseminated within the state be introduced by a live, natural voice giving the name of the entity calling, the name of the entity being represented, an address or phone number for that entity, and asking permission to play the recording. Defendant's illegal prerecorded telemarketing calls to Plaintiff failed to comply with this requirement.

12. As a proximate result of defendants' violation of Civil Code section 1770, plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be proven at trial.

13. Civil Code section 1780 (a) (2) provides for an injunction against future conduct in violation of Civil Code section 1770.

14. Civil Code section 1780 (a) (4) provides for an award of punitive damages for violations of Civil Code section 1770.

15. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs harmed by California Civil Code §1770 (a) (22) (A) violations.

THIRD CAUSE OF ACTION
[Trespass to Chattel]

16. Plaintiff realleges paragraphs 1 through 15 above and incorporates them herein by reference.

17. The conduct by defendants complained of herein, namely calling Plaintiff's number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's express permission, constitutes an electronic trespass to chattel.

18. At no time did Plaintiff consent to this trespass.

19. As a proximate result of these intrusions, Plaintiff suffered damage in an amount according to proof.

20. In making the illegal calls described above, defendants were guilty of oppression and malice, in that defendants made said calls with the intent to vex, injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of punitive damages.

FOURTH CAUSE OF ACTION
[Engaging in Unfair Business Practices]

21. Plaintiff realleges paragraphs 1 through 20 above and incorporates them herein by reference.

22. Because these telephone calls violate federal statutes, they are unlawful business practices within the meaning of section 17200 of the Business and Professions Code.

23. Section 17203 of the Business and Professions Code entitles Plaintiff to an injunction enjoining defendants from engaging in unfair or unlawful business practices.

WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as follows:

On the FIRST CAUSE OF ACTION:

1. For an award of $500.00 for each violation of 47 U.S.C. §227;
2. For an award of $1,500.00 for each such violation found to have been willful;

On the SECOND CAUSE OF ACTION:

3. For compensatory damages according to proof;
4. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in activity in violation of California Civil Code §1770 (a) (22) (A);
5 For punitive damages;
6. For attorneys fees;

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On the THIRD CAUSE OF ACTION:

7. For compensatory damages according to proof;

8. For punitive damages;

On the FOURTH CAUSE OF ACTION:

9. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in unfair or unlawful business practices pursuant to section 17203 of the Business and Professions Code;

On ALL CAUSES OF ACTION:

10. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

11. For costs of suit herein incurred; and

12. For such further relief as the Court deems proper.

Dated: October 2, 2007

By: ______________________
CHAD AUSTIN, Esq.
Attorney for Plaintiff JAMES M. KINDER